

Decision **DRAFT DECISION OF ALJ KENNEY** (Mailed 1/22/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Expedited Application of Pacific Gas and Electric Company (U 39 M) to (1) Issue, Sell and Deliver One or More Series of Its First and Refunding Mortgage Bonds, Debentures, Subordinated Deferrable Interest Debentures, Promissory Notes and/or Other Evidences of Indebtedness in Connection with Domestic or Euro-Market offerings, to Guarantee the Obligations of Others in Respect of the Issuance of Securities and to Arrange For Standby Letters of Credit as Performance Guarantees, the Total Aggregate Principal Amount of Such Issuances and Guarantees Not to Exceed \$2 Billion; (2) Enter into One or More Interest Rate Caps, Collars and Swaps; (3) Issue Variable Rate Debt (Including Fixed Rate Debt Swapped to a Variable Rate) to Finance Balancing Account Undercollections; and (4) Obtain an Exemption from the Competitive Bidding Rule.

Application 00-10-029
(Filed October 18, 2000)

**OPINION REGARDING THE PETITION TO MODIFY
DECISION (D.) 01-06-074, D.01-02-050, AND D.01-01-062
FILED BY PACIFIC GAS AND ELECTRIC COMPANY**

Summary

This decision extends Pacific Gas and Electric Company's (PG&E's) authority to pledge its gas customer accounts receivable ("accounts receivable") and core gas inventory ("core inventory") for the purpose of procuring core gas supplies until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the

credit rating of PG&E's senior unsecured long-term debt to at least BBB- by Standard & Poor's (S&P) or Baa3 by Moody's Investor Services, Inc. (Moody's), (iii) the effective date of PG&E's Chapter 11 Plan, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

Background

In D.01-01-062, the Commission granted PG&E authority under Pub. Util. Code § 851¹ to pledge its accounts receivable and core inventory² for the sole purpose of procuring core gas supplies. The authority granted by D.01-01-062 terminated the earlier of (i) 90 days after the effective date of the decision, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by S&P or Baa3 by Moody's. In D.01-02-050, the Commission extended PG&E's authority to pledge its accounts receivable and core inventory until July 31, 2001. In D.01-06-074, the Commission extended PG&E's authority until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt. The Commission issued these decisions in response to the precipitous decline in PG&E's financial condition, which culminated in PG&E filing for bankruptcy.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

² For purposes of this decision, "core inventory" is defined as gas designated for core customers that is held in storage fields and pipelines.

On December 11, 2001, PG&E filed a petition to modify D.01-01-062, D.01-02-050, and D.01-06-074 (Petition).³ In its Petition, PG&E asks the Commission to extend PG&E's authority to pledge its accounts receivable and core inventory from May 1, 2002, to the earlier of (i) May 1, 2004, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt. PG&E does not seek to have its authority tied to events in its bankruptcy case.

PG&E states that it needs an extension of its authority in order to preserve its ability to procure adequate supplies of gas to meet the needs of its customers. PG&E intimates that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's accounts receivables.⁴ PG&E also represents that gas suppliers' concerns about PG&E's credit quality have been heightened by recent events surrounding Enron.

PG&E asks the Commission to act on its Petition at the Commission's meeting on January 23, 2002. PG&E states that delaying action could erode PG&E's ability to procure core gas supplies for the summer of 2002 and beyond.

Dynegy Marketing and Trade (Dynegy) supports PG&E's Petition. Dynegy maintains that extending PG&E's authority to pledge its assets is crucial

³ Although PG&E refers to its pleading as a petition to modify D.01-01-062, D.01-02-050, and D.01-06-074, there is nothing in the Petition that indicates it is necessary to modify either D.01-01-062 or D.01-02-050. For example, PG&E proposed specific changes to the wording of D.01-06-074 as required by Rule 47(c), but PG&E did not propose any specific changes to D.01-01-062 or D.01-02-050.

⁴ PG&E states that the bankruptcy court has authorized PG&E's continued use of gas accounts receivables to secure core gas purchases. The bankruptcy court's jurisdiction does not affect § 851, which requires PG&E to obtain authority from the Commission prior to encumbering its gas accounts receivable.

to PG&E's continued success in securing adequate supplies of gas for its customers during a period of financial distress.

Discussion

We are persuaded by PG&E that it needs an extension of time beyond May 1, 2002, to pledge its accounts receivable and core inventory for the purpose of procuring core gas supplies. We are not persuaded, however, that PG&E should be granted an extension until May 1, 2004. Given the nature of PG&E's finances, we believe that it is in the public interest to periodically reconsider PG&E's need for authority to pledge its accounts receivable and core inventory.

For the preceding reasons, we will modify D.01-06-074 to extend PG&E's authority to pledge its accounts receivable and core inventory for the sole purpose of procuring core gas supplies until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of PG&E's Chapter 11 Plan, or (iv) the dismissal or conversion of PG&E's Chapter 11 case. In all other respects, D.01-06-074 remains in full force and effect.

Procedural Matters

Notice of PG&E's Petition appeared in the Commission's Daily Calendar on December 13, 2001. Pursuant to a ruling issued by assigned Administrative Law Judge (ALJ) Kenney on December 14, 2001, responses to PG&E's Petition were due on December 24, 2001. Dynergy filed a timely response.

Section 311(g)(1) requires the Commission's draft decision regarding PG&E's Petition to be (i) served on all parties, and (ii) subject to at least 30 days of public review and comment prior to a vote of the Commission. Section 311(g)(2) allows the 30-day period to be reduced or waived upon the stipulation of all parties. In its Petition, PG&E asks the Commission to reduce

the 30-day period for public review and comment to 10 days. There was no opposition to PG&E's request.

The draft decision of ALJ Kenney was mailed and e-mailed on _____. Comments regarding the draft decision were filed on _____, by _____. These comments have been incorporated, as appropriate, in the final decision adopted by the Commission.

Findings of Fact

1. D.01-01-062 granted PG&E authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring core gas supplies. The authority terminated 90 days after the effective date of D.01-01-062, or, if earlier, 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's.

2. D.01-02-050 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) July 31, 2001, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt.

3. D.01-06-074 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt.

4. PG&E represents that it needs an extension of its authority to pledge its accounts receivable and core inventory in order to maintain its ability to procure adequate supplies of gas to meet the needs of its core customers.

5. PG&E intimates that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's accounts receivable and core inventory.

Conclusions of Law

1. It is in the public interest to extend beyond May 1, 2002, PG&E's authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring gas supplies to meet the needs of its core customers.

2. Given the nature of PG&E's finances, it is in the public interest to periodically reconsider PG&E's need for authority to pledge its accounts receivable and core inventory.

3. PG&E's authority to pledge its accounts receivable and core inventory should be extended to the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of PG&E's Chapter 11 Plan, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

4. The following order should be effective immediately to help ensure PG&E's uninterrupted ability to procure sufficient supplies of gas to meet the needs of its core customers.

O R D E R**IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to pledge its gas customer accounts receivable and core gas inventory, subject to PG&E's Mortgage, for the sole purpose of procuring gas for PG&E's core customers, including flowing gas supplies and storage gas.

2. The authority granted to PG&E in Ordering Paragraph 1 shall terminate the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by Standard & Poor's or Baa3

by Moody's Investor Services, (iii) the effective date of PG&E's Chapter 11 Plan, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

3. PG&E's petition to modify Decision (D.) 00-01-062, D.01-02-050, and D.01-06-074 filed on December 11, 2001, is granted and denied to the extent set forth in the previous Ordering Paragraphs. In all other respects, these decisions remain in full force and effect.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.